

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

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REGIONAL HEARING CLERK
EPA REGION 6

In the Matter of	§
	§
El Paso Water Utilities	§ Docket No. CAA-06-2026-3506
El Paso, Texas	§
	§
	§
Respondent	§
	§

ADMINISTRATIVE ORDER ON CONSENT

A. PRELIMINARY STATEMENT

1. This Administrative Compliance Order on Consent ("Order") is brought under Section 113(a) of the Clean Air Act (the "CAA" or the "Act"), 42 U.S.C. § 7413(a). Section 113(a)(3)(B) of the CAA authorizes the Administrator of the United States Environmental Protection Agency to issue an order requiring compliance to any person the Administrator finds to have violated, or is in violation of the CAA, which includes, among other things, the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder.

2. Complainant is the United States Environmental Protection Agency, Region 6 ("EPA"). On EPA's behalf, the Director of the Enforcement and Compliance Assurance Division, EPA Region 6 has been delegated the authority to settle civil administrative penalty and compliance proceedings under Section 113(a) of the Act, 42 U.S.C. § 7413(a).

3. El Paso Water Utilities (“El Paso Water” or “Respondent”) is a municipal government utility provider doing business in the State of Texas. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

4. Complainant and Respondent have agreed to voluntarily enter into this Order for the purposes of carrying out the goals of Section 112(r) of the Clean Air Act (“CAA”), 42 U.S.C. § 7412(r).

B. JURISDICTION

5. This Order is entered into pursuant to Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B) for the alleged violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder.

6. Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), provides that whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of Subchapter I of the CAA, which includes, among other things, the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder, the Administrator may issue an order requiring compliance with such requirement or prohibition.

7. On April 15, 2025, EPA issued to Respondent an informal questionnaire, seeking answers to questions regarding an incident that occurred on April 26, 2024, where an employee was fatally injured at El Paso Water. On May 19, 2025, representatives for the Respondent responded to the informal questionnaire.

C. STATUTORY AND REGULATORY BACKGROUND

Clean Air Act, Section 112(r)

8. The objective of Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1), is to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance.

9. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), requires the Administrator to promulgate, not later than 24 months after November 15, 1990, a list of regulated substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment.

10. Pursuant to Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), the Administrator initially promulgated a list of regulated substances, with threshold quantities for applicability, at 59 Fed. Reg. 4478 (January 31, 1994), which is codified, as amended, at 40 C.F.R. § 68.130.

General Duty Clause

11. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), commonly referred to as the "General Duty Clause," owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty, in the same manner and the same extent as the Occupational Safety and Health Act (OSHA), 29 U.S.C. § 654 *et. seq.*, to (a) identify hazards which may result from accidental releases of such substances, using appropriate hazard assessment techniques; (b) design and maintain a safe

facility, taking such steps as are necessary to prevent releases; and (c) minimize the consequences of accidental releases which do occur.

Definitions

12. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines "person" to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

13. The term "extremely hazardous substance" means an extremely hazardous substance within the meaning of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). Such substances include any chemical which may, as a result of short-term exposures associated with releases to the air, cause death, injury, or property damage due to its toxicity, reactivity, flammability, or corrosivity.¹ The term includes, but is not limited to, regulated substances listed in Section 112(r)(3), 42 U.S.C. § 7412(r)(3), and 40 C.F.R. 68.130. Also, the release of any substance that causes death or serious injury because of its acute toxic effect or as a result of an explosion or fire or that causes substantial property damage by blast, fire, corrosion, or other reaction would create a presumption that such substance is extremely hazardous.²

D. FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. Respondent is, and at all times referred to herein was, a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

¹ Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Sen. Report No. 228, 101st Congress, 1st Session 211 (1989).

² *Id.*

15. Respondent is the owner and operator of a facility located at: 10001 Pan American Drive, El Paso, TX 79927 (the "Facility")

16. On April 26, 2024, there was an incident at the Facility that resulted in a fatality of one (1) worker while working in a scum pit (the "Incident"). EPA sent an informal questionnaire to Respondent and Respondent provided documentation and information concerning the Incident and Respondent's compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

17. Based on the response provided on May 19, 2025, EPA conducted an investigation of the Facility to determine Respondent's compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 (the "Investigation").

18. The Incident occurred at one of the Facility's scum pits, which had been offline and not in operation on the date of the Incident.

19. Based upon the information gathered during the Investigation, EPA determined that Respondent violated certain provisions of the CAA.

E. ALLEGED VIOLATIONS

20. The facts stated in EPA Findings of Fact and Conclusions of Law above are herein incorporated.

21. Complainant hereby states and alleges that Respondent has violated the CAA and federal regulations promulgated thereunder as stated below.

Count 1 – General Duty Clause

22. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), states that the owners and operators of stationary sources processing, handling, or storing such substances [i.e., a chemical

in 40 C.F.R. Part 68 or any other extremely hazardous substance] have a general duty [in the same manner and to the same extent as the general duty clause in the Occupational Safety and Health Act (OSHA)] to identify hazards which may result from (such) releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

23. Respondent was unable to determine the root cause of the Incident. Despite the scum pit being empty and non-operational at the time of the Incident, it is inconclusive whether a chemical byproduct of the scum pit itself contributed to the Incident.

24. Despite good faith efforts to recreate the conditions on the day of the Incident, Respondent's inability to conclusively identify the root cause of the Incident is a violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), for failing to identify a hazard.

Count 2 – General Duty Clause

25. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), states that the owners and operators of stationary sources processing, handling or storing such substances [i.e., a chemical in 40 C.F.R. Part 68 or any other extremely hazardous substance] have a general duty [in the same manner and to the same extent as the general duty clause in the Occupational Safety and Health Act (OSHA)] to identify hazards which may result from (such) releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

26. On April 26, 2024, there was a fatality of an employee of El Paso Bustamante Wastewater Treatment Plant. One corrective action identified to prevent recurrence in the response to informal questions provided by Respondent was to create "a formal directive requiring all plant staff to always wear personal air monitors while inside the plant." Another corrective action identified to prevent recurrence in the response to informal questions provided by Respondent was to "identify and label with proper signage all confined spaces throughout the Utility Plants" by July 2025.

27. Respondent's failure to design and maintain a safe facility is a violation pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 3 – General Duty Clause

28. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), states that the owners and operators of stationary sources processing, handling or storing such substances [i.e., a chemical in 40 C.F.R. Part 68 or any other extremely hazardous substance] have a general duty [in the same manner and to the same extent as the general duty clause in the Occupational Safety and Health Act (OSHA)] to identify hazards which may result from (such) releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

29. Respondent failed to train employees as to hazards which they may encounter and failed to train operators how to safely respond to process upsets. Corrective actions identified by Respondent to prevent recurrence included hydrogen sulfide, chlorine, and confined space entry training for all pertinent staff. Another corrective action identified to

prevent recurrence in the response to informal questions provided by Respondent was to develop and implement a confined space entry standard operating procedure in English and Spanish.

30. Respondent's failure to minimize the consequences of an accidental release is a violation pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

F. ORDER FOR COMPLIANCE

Compliance Actions

31. Based on the EPA Findings of Fact and Conclusions of Law and the Alleged Violations set forth above and pursuant to the authority of Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), as amended, Respondent is hereby ORDERED and agrees to comply with the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Specifically, EPA and Respondent agree that Respondent shall, as expeditiously as possible, complete the following actions (Compliance Actions):

- a. Ensure all pertinent plant staff have attended confined space training;
- b. Develop and implement confined space entry standard operating procedures in English and Spanish to include zero tolerance language for existing personnel and a second version to include roles and responsibilities of plant safety positions;
- c. Update the disciplinary policy memo to include zero tolerance language regarding confined space entry procedure violations;
- d. Identify and label with proper signage all confined spaces and permit required confined spaces throughout the utility plants;

- e. Create a formal directive requiring all plant staff to always wear personal air monitors while inside the plant;
 - f. Create a formal directive stating that no alterations to plant infrastructure will be implemented unless reviewed and approved by an engineer and to address language that identifies "safe" and "unsafe" plant areas;
 - g. Create a master list of all confined spaces throughout the utility and confined spaces that are serviced by the utility throughout the city;
 - h. Develop training on identifying characteristics and hazards of hydrogen sulfide;
 - i. Verify if certificates can be provided for current and future confined space training; and,
 - j. Coordinate a procurement process to provide hands-on confined space entry training.
32. The above compliance actions are to be completed no later than December 31, 2025.

Submissions

33. Upon completion of all of the compliance actions above, Respondent shall submit the following, signed by an authorized representative of Respondent:

I certify under penalty of law that I have examined and am familiar with the Compliance Actions listed under Section F. of the Administrative Order on Consent, based on my inquiry of those individuals immediately responsible for the compliance actions, the Compliance Actions have been completed by El Paso Water Utilities. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

34. All submissions to EPA required by this Order shall be sent by electronic mail to:

Carlos Flores
flores.carlos@epa.gov

35. All documents submitted by Respondent to EPA in the course of implementing this Order shall be available to the public unless identified and determined to be confidential business information pursuant 40 C.F.R. Part 2, Subpart B.

36. EPA reserves the right to pursue enforcement of any violations identified as a result of Paragraph 31 (Compliance Actions).

Additional Terms

37. By signing this Order, Respondent acknowledges that this Order will be available to the public and agrees that this Order does not contain any confidential business information.

38. By entering into this Order, Respondent (1) consents to and agrees not to contest EPA's authority or jurisdiction to issue or enforce this Order, (2) agrees to undertake all actions required by the terms and conditions of this Order, (3) consents to service by email at the following valid email addresses: sharma.ravi@epa.gov (for EPA) and PMBorschow@epwater.org (for Respondent), and (4) consents to be bound by the requirements set forth herein.

39. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including, but not limited to, any right of judicial review of this Order under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1), or under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

Stipulated Penalties

40. Respondent shall be liable for stipulated penalties for failure to comply with the requirements of this Order. The following stipulated penalties shall accrue per violation per day for failure to comply with the Compliance Actions or Submissions requirements above:

<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
\$15,000	1st through 30th day
\$37,500	31st day and beyond

41. All penalties shall begin to accrue on the day after the complete performance is due, or on the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity required by this Order.

42. The payment of penalties shall not alter in any way Respondent's obligation to comply with the provisions of this Order.

43. All penalties accruing under this section shall be due and payable to the United States within thirty (30) days of Respondent's receipt from EPA of a demand for payment of stipulated penalties.

44. Respondent shall pay stipulated penalties and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

45. When making a payment, Respondent shall:

a. Identify every payment with Respondent's name and the docket number of this Order, Docket No. CAA-06-2026-3506. The payment shall also be accompanied by

a transmittal letter that shall reference Respondent's name and address, the case name, and docket number CAA-06-2026-3506.

b. Concurrently with any payment, email proof of such payment, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and the transmittal letter to the following email addresses:

Carlos Flores
U.S. EPA Region 6
flores.carlos@epa.gov

and

Region 6 Hearing Clerk
U.S. EPA Region 6
vaughn.lorena@epa.gov

46. Respondent understands that failure to timely pay any portion of a stipulated penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on the stipulated penalty from the date of delinquency until such stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs and a non-payment penalty charge of six percent (6%) per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

47. Only if stipulated penalties attach - pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to annually send to the Internal Revenue Service (“IRS”), a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To provide EPA with sufficient information to enable it to fulfill these obligations, Respondent shall complete the following actions as applicable:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>.
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN.
- c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Division at chalifoux.jessica@epa.gov within thirty (30) days after the Effective Date per Section I of this Order or within seven (7) days should this Order

become effective between December 15 and December 31 of the calendar year.

EPA recommends encrypting IRS Form W-9 email correspondence.

- d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Division with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

G. GENERAL PROVISIONS

48. Respondent neither admits nor denies any of the factual or legal determinations made by EPA in this Order.

49. The provisions of this Order shall apply and be binding upon Respondent and its agents, officers, directors, employees, trustees, authorized representatives, successors, and assigns. Respondent shall ensure that any agents, officers, directors, employees, contractors, consultants, firms or other persons or entities acting under or for Respondent with respect to matters included herein comply with the terms of this Order. From the Effective Date until termination of this Order, Respondent must give written notice and a copy of this Order to any successors in interest prior to any transfer of ownership or control of any portion or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to EPA. In the event of such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Order unless EPA has provided written approval of the release of said obligations or liabilities.

50. This Order does not resolve any civil or criminal claims for violations alleged in this Order. In accordance with Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), issuance of

this Order does not preclude EPA from assessing penalties, obtaining injunctive relief, or taking any other action authorized under the CAA, or other applicable federal laws or regulation. This Order does not affect the obligation of Respondent to comply with all federal, state, and local statutes, regulations, and permits.

51. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to public health, welfare, or the environment.

52. Nothing in this Order shall limit EPA's right to obtain access to, and/or inspect the Facility, and/or to request additional information from Respondent pursuant to the authority of Section 114 of the CAA, 42 U.S.C. § 7414.

53. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of Section F (Compliance Actions and Submissions) in this Order is restitution, remediation, or required to come into compliance with the law.

54. Respondent and the EPA agree to bear their respective costs and attorney's fees. Respondent waives its right to seek reimbursement of their costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 104-121), and any regulations promulgated thereunder.

55. By signing this Order, the undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Order, and to execute and legally bind Respondent to this Order.

56. EPA and Respondent may subsequently amend this Order, in writing, in accordance with the authority of the CAA. In the event of any amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by the original Order.

57. By signing this Order, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, to the best of its knowledge and belief, truthful, accurate, and complete for each submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

H. FAILURE TO COMPLY

58. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Order. This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which EPA has under any statutory, regulatory, or common law authority of the United States.

59. Any violation of this Order may result in an additional enforcement action under Section 113 of the CAA, 42 U.S.C. § 7413. EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes the Administrator to:

- a. issue an administrative penalty order under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), assessing a civil penalty not to exceed \$59,114 (or amount as adjusted by the Civil Monetary Penalty Adjustment Rule) per day of violation, pursuant to Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B);
- b. bring a civil judicial enforcement action for permanent or temporary injunction, or to assess and recover a civil penalty not to exceed \$472,901 (or amount as adjusted by the Civil Monetary Penalty Adjustment Rule) per day of violation, or both, pursuant to Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2); or
- c. request the Attorney General to commence a criminal action pursuant to Section 113(c) of the CAA, 42 U.S.C. § 7413(c).

I. EFFECTIVE DATE

60. Pursuant to Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), this Order shall be effective on the date that it is signed by the authorized EPA representative and shall remain in effect for one year from the Effective Date or on the date that EPA determines that Respondent has achieved compliance with all terms of this Order. This Order shall be nonrenewable.

61. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

RESPONDENT:

EL PASO WATER UTILITIES

Date: _____

John Balliew

Digitally signed by John
Balliew
Date: 2025.12.12
11:36:59 -07'00'

Signature

Name

President/CEO
Title

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: _____

Cheryl J. Seager

Digitally signed by
CHERYL SEAGER
Date: 2025.12.16
13:33:46 -06'00'

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Administrative Order on Consent was filed with me, the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that I sent a true and correct copy on this day in the following manner to the email addresses:

Copy via Email to EPA:

sharma.ravi@epa.gov
flores.carlos@epa.gov

Copy via Email to Respondent:

PMBorschow@epwater.org
Rrodriguez@epwater.org

Patricia Borschow
El Paso Water Utilities-Public Service Board
1154 Hawkins Boulevard
El Paso, Texas 79925

Ruben Rodriguez
El Paso Water Utilities-Public Service Board
4100L Delta Dr.
El Paso, TX 79905

LORENA
VAUGHN

Digitally signed by
LORENA VAUGHN
Date: 2025.12.17
12:34:32 -06'00'

Regional Hearing Clerk
U.S. EPA, Region 6